

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JUDGMENT INCLUDING SENTENCE
UNDER THE SENTENCING REFORM ACT

CHARLIE HERNANDEZ

CASE NUMBER: CR-04-428 (ARR)

JUSTINE HARRIS, ESQ

16 COURT STREET, 3rd FL.

BROOKLYN, NEW YORK 11241

Defendant's Attorney & Address

THE DEFENDANT:

XXX pleaded guilty to count one of the indictment.

_____ was found guilty on counts

after a plea of not guilty.

Accordingly, the defendant is ADJUDGED guilty of such count(s), which involve the following offenses:

<u>TITLE & SECTION</u>	<u>NATURE & OFFENSE</u>	<u>COUNT NUMBER(S)</u>
21 USC 952(a),	IMPORTATION OF HEROIN.	ONE (1)
960(a) (1) &		
960(b) (3)		

The defendant is sentenced as provided in pages 2 through of this Judgment.
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

_____ The defendant has been found not guilty on count(s) and is discharged as to such count(s).

XXX Remaining counts are dismissed on the motion of the United States.

XXX It is ordered that the defendant shall pay to the United States a special assessment of \$100.00 which shall be due XXX immediately as follows:

It is further ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec # _____

JUNE 28, 2005

Date of Imposition of Sentence

Defendant's Date of Birth 12/27/83

Defendant's Mailing Address:

ADLYNE R. ROSS, U.S.D.J.

2417 WEST STREET

JUNE 28, 2005

Date

UNION CITY, NEW JERSEY 07087

Defendant's Residence Address:

A TRUE COPY ATTEST

Date: _____

ROBERT C. HEINEMANN

CLERK OF COURT

(SAME AS ABOVE)

By: _____

DEPUTY CLERK

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twenty four (24) months.

XXX The Court makes the following recommendations to the Bureau of Prisons:
THAT THE DEFT BE HOUSED AT THE FORT DIX FACILITY.

____ The defendant is remanded to the custody of the United States Marshal.
____ The defendant shall surrender to the United States Marshal for this district,

____ at _____ a.m./p.m. on _____
____ as notified by the Marshal.

____ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

____ before 12:00 noon on _____
____ as notified by the United States Marshal.
____ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this Judgment.

United States Marshal

By _____

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- 1) DEFT SHALL PARTICIPATE IN A SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT PROGRAM SELECTED BY THE PROBATION DEPARTMENT; TREATMENT MAY INCLUDE OUTPATIENT OR RESEIDENTAL TREATMENT; DEFT SHALL ABSTAIN FROM THE USE OF ALL ILLEGAL SUBSTANCES AND/OR ALCOHOL. THE DEFT SHALL CONTRIBUTE TO THE COST OF SERVICES RENDERED AND ANY PSYCHOTROPIC MEDICATIONS PRESCRIBED, VIA CO-PAYMENT OR FULL PAYMENT IN AN AMOUNT TO BE DETERMINED BY THE PROBATION DEPARTMENT, BASED UPON THE DEFT'S ABILITY TO PAY AND/OR THE AVAILABILITY OF THIRD PARTY PAYMENT.

— The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another Federal, state or local crime;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall support his or her dependents and meet other family responsibilities;
- 6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

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FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of \$ 100.00, consisting of a fine of \$ N/A and a special assessment of \$ 100.00.

— These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

This sum shall be paid — immediately
— as follows:

XXX The Court has determined that the defendant does not have the ability to pay any fines, cost of confinement or supervision.

— The interest requirement is waived.
— The interest requirement is modified as follows:

1 (BEGINNING OF EXCERPT.)

2 THE COURT: Okay. Well, let me say I was impressed
3 by the thoroughness of the report of Dr. Bardey, that is
4 predicated at least in part on another report by Dr. Drob.
5 Dr. Bardey does conclude that the defendant suffered from
6 depression with certain psychotic features including suicidal
7 thoughts and auditory hallucinations, this is at least
8 historically, as well as substance abuse and that at the time
9 of the offense these impaired his ability to make sound
10 judgments.

11 Indeed, the doctor does conclude that Mr. Hernandez
12 was under an impaired mental state when he committed the crime
13 and I think just as importantly, as counsel points out, he
14 also concludes that Mr. Hernandez has the potential for
15 rehabilitation with residential treatment for mental illness
16 and substance abuse. In fact, as is set forth in the
17 presentence report which was drafted prior to the problems
18 that Mr. Hernandez had, he did demonstrate an ability to turn
19 himself around as he feels he can at this point in time and,
20 in fact, I think the Probation Department tacitly endorsed
21 that at least until the point where he slipped as potentially
22 some sort of extraordinary post-offense rehabilitation. We
23 now know that is not the case but it is important that he
24 tried.

25 Under the circumstances that include his impaired

1 functioning and psychological problems, which medical evidence
2 does indicate is treatable, I think that it is possible to
3 fashion a sentence within all the goals of sentence enumerated
4 in the statute.

5 We must start obviously though with the seriousness
6 of the offense. That was a lot of heroin and it starts by
7 carrying and we all acknowledge that the guidelines bring us
8 to 51 to 63 months but I do think that the seriousness of the
9 offense, when coupled with the particular circumstances of
10 Mr. Hernandez, his psychiatric problems, his -- what the
11 doctor opines to be an ability to rehabilitate, as well as his
12 own evident commitment to that, I believe that an appropriate
13 sentence would be committing Mr. Hernandez to the custody of
14 the Attorney General for a period of 24 months to be followed
15 by a three-year period of supervised release with special
16 conditions that he participate in substance abuse and mental
17 health treatment programs selected by the Probation
18 Department.

19 I have no reason to believe that the inpatient MICA
20 program that you have recommended is not the best one for him
21 and I would commend that to the Probation Department but I
22 know they have far more experience in that than I do.
23 However, it is clear that this treatment may include
24 residential treatment.

25 The defendant is required to abstain from the use of

1 all illegal substances and alcohol and shall contribute to the
2 cost of services rendered by copayment or full payment based
3 on his ability to pay and/or the availability of third-party
4 payment.

5 I also prohibit the possession of a firearm. I make
6 a finding that he's unable to pay a fine but I will impose the
7 mandatory \$100 special assessment.

8 Are there any open counts, Ms. Mitnick?

9 MS. MITNICK: Your Honor, Count Two remains open and
10 we ask that it be dismissed.

11 THE COURT: The motion is granted.

12 Mr. Hernandez, there are circumstances in which a
13 defendant may appeal the sentence. I don't believe it is
14 going to apply to your case but you discuss that with
15 Ms. Harris. If you choose to appeal, a notice of appeal must
16 be filed within ten days and an attorney will continue to
17 represent you.

18 THE DEFENDANT: I understand.

19 MS. HARRIS: Thank you, Judge. Just one matter, as
20 the Court is aware, Mr. Hernandez lives -- his family lives in
21 New Jersey and I think he'd like a recommendation that he be
22 able to serve the remainder of his time at Fort Dix in New
23 Jersey and I would assume that it would be a matter of course
24 that he would then be supervised by the probation office in
25 New Jersey but I don't know if any special note needs to be

1 made of that on the record.

2 PROBATION OFFICER: First he comes to us and then we
3 process it.

4 THE COURT: Then there may be a transfer to New
5 Jersey.

6 PROBATION OFFICER: Then we transfer him but we do
7 the processing part.

8 THE COURT: But we'll do the recommendation to Fort
9 Dix.

10 MS. HARRIS: Thank you, Judge.

11 MS. MITNICK: Thank you.

12 PROBATION OFFICER: Thank you, Your Honor.

13 (End of proceedings.)
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